

C.W., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

Before:

JURISDICTION

On August 19, 2019 appellant, through counsel, filed a timely appeal from a July 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the July 10, 2019 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include additional cervical, lumbar, and shoulder conditions causally related to his accepted August 28, 2012 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 31, 2012 appellant, then a 51-year-old transitional city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2012 he sustained a traumatic injury when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on August 29, 2012.⁵ OWCP accepted his claim for cervical and lumbar sprains, and left shoulder strain. It paid continuation of pay (COP) from August 29 to October 12, 2012 and wage-loss compensation benefits on the periodic rolls effective April 29, 2013.

Appellant continued to receive medical treatment. In a September 29, 2014 report, Dr. Louis Train, a Board-certified family practitioner, recounted that on August 28, 2012 appellant was driving at work when he was broadsided by another motor vehicle and sustained injuries to his neck, right arm, right thigh, and lower back. He noted that appellant's claim was accepted for cervical and lumbar sprains. Dr. Train provided examination findings and requested that appellant's claim be expanded to include internal derangement of both shoulders.

In a November 12, 2014 narrative report, Dr. Train explained that, based on appellant's history, mechanism of injury, and previous examinations, appellant had depressive disorder and additional issues, including anxiety and chronic pain. He opined that these additional diagnoses were a direct result of appellant's work-related injury. Dr. Train requested that appellant's claim be expanded to include the diagnoses of psychogenic pain/chronic pain syndrome, major depressive disorder, and generalized anxiety disorder.

By decisions dated April 6 and 22, 2015, OWCP denied expansion of appellant's claim to include bilateral shoulder internal derangement, psychogenic pain, chronic pain, chronic pain syndrome, and major depressive disorder, finding that the medical evidence of record was insufficient to establish that the additional conditions were caused or aggravated by his August 28, 2012 employment injury.

On May 4, 2015 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 16, 2015. By decision dated February 1, 2016, an OWCP hearing representative affirmed the April 22, 2015 decision.

On March 22, 2016 appellant filed an appeal with the Board.

⁴ Docket No. 16-0858 (issued April 3, 2017).

⁵ On October 18, 2012 appellant's term appointment ended.

By decision dated April 3, 2017, the Board affirmed OWCP's February 1, 2016 decision, finding that appellant had not met his burden of proof to expand his claim to include the additional conditions of internal derangement of bilateral shoulders, psychogenic pain, chronic pain syndrome, and major depressive disorder as causally related to the accepted August 28, 2012 employment injury.⁶

Following the Board's decision, appellant, through counsel, requested reconsideration and submitted additional medical evidence.

Appellant submitted reports by Dr. Mical Samuelson Duvall, Board-certified in anesthesiology and pain management, dated January 4 and February 29, 2016 relative to his treatment for ongoing neck and lower back pain radiating down to his right leg. Dr. Duvall reported cervical and lumbar spine examination findings and diagnosed lumbar and neck sprain, and lumbar pain.

OWCP also received reports by Dr. Charles Reinhardt, an osteopath specializing in anesthesiology. In a June 1, 2016 report, Dr. Reinhardt recounted that on August 28, 2012 appellant was driving a postal vehicle when he was blindsided by another vehicle. He noted appellant's accepted conditions of lumbar and cervical spine sprains and indicated that his claim should be expanded to include the condition of internal disc disruption. Dr. Reinhardt reviewed appellant's diagnostic examinations and provided cervical and lumbar spine examination findings. He continued to provide reports dated October 11, 2016 to February 27, 2017, regarding his treatment of appellant for his cervical spine disc disease, lumbar disc disease, and depression.

In a July 26, 2016 psychological report, Dr. George P. Grimes, a clinical psychologist, described the August 28, 2012 employment injury and noted that appellant was treated for cervical and lumbar spine sprains. He noted that, due to increased pain levels, appellant was having difficulty performing certain physical activities, sleeping three to four hours due to nightmares and sleep disturbances, and experienced nervousness, agitation, decreased appetite, weight fluctuations, and headaches. Dr. Grimes conducted psychometric testing and a mental status examination. He reported that appellant suffered a work-related injury, resulting in psychosocial stressors including increased pain levels, physical limitations, and loss of function. Dr. Grimes diagnosed chronic pain disorder.

In a March 27, 2017 report, Dr. Reinhardt recounted appellant's complaints of neck, lumbar, and right knee pain following a work-related motor vehicle. He reviewed the medical treatment history, including magnetic resonance imaging (MRI) studies of his cervical spine, lumbar spine, and right shoulder. Dr. Reinhardt diagnosed cervical spine disc disease, lumbar disease with bilateral radiculopathy, and right shoulder rotator cuff. He opined that appellant developed an occupational injury due to his duties of prolonged standing, walking, bending, stooping, lifting, pushing, pulling, reaching, twisting, and turning as a carrier. Dr. Reinhardt requested that appellant's claim be expanded to include the additional conditions of spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, and lumbar spondylosis foramen stenosis.

⁶ *Supra* note 4.

Appellant also underwent diagnostic examination testing on March 13, 2017. A lumbar spine MRI scan report revealed lumbar spondylosis resulting in mild spinal canal and mild bilateral neural foramen stenosis at L2-3 and L3-4 and mild bilateral neural foramen stenosis at L4-5.

Dr. Reinhardt continued to submit medical reports dated May 1, 2017 to February 27, 2019 for follow-up evaluations of appellant's cervical spine, lumbar spine, and bilateral shoulders. He also continued to refer to his March 2017 request to upgrade appellant's claim to include spinal stenosis at C3-4, C4-5, and C5-6, cervical and lumbar disc disease, and lumbar spondylosis foramen stenosis. In an April 9, 2018 report, Dr. Reinhardt began to request that appellant's claim be expanded to include the additional condition of right shoulder tear of the supraspinatus tendon. He also indicated that appellant had depression due to stress and lack of work. Dr. Reinhardt diagnosed cervical spine disc disease, depression, lumbar disc disease with bilateral radiculopathy, and right shoulder rotator cuff.

By decision dated April 3, 2019, OWCP denied modification of its prior decision denying expansion of appellant's claim to include additional conditions.

Appellant underwent diagnostic examination on March 11, 2019. A lumbar spine MRI scan report showed L4-5 posterior central 3.5 mm disc protrusion and moderate central canal stenosis, L3-4 posterior central disc protrusion, L2-3 posterior left central disc protrusion, and multilevel foraminal stenosis with moderate left L2, moderate bilateral L3, and severe bilateral L4 nerve root contact in the foraminal spaces. A cervical spine MRI scan report revealed C2-3 disc protrusion, C3-4 disc protrusion, C4-5 disc protrusion, C5-6 disc protrusion, and multilevel foraminal stenosis with severe contact on bilateral C4 and bilateral C5 nerve roots.

On April 22, 2019 appellant, through counsel, requested reconsideration.

Appellant submitted an April 15, 2019 report by Dr. Reinhardt in which he noted that appellant was seen for follow-up evaluation of his cervical, thoracic, and lumbar spine and shoulders. He discussed the most recent MRI scan results and reviewed previous examination findings. Dr. Reinhardt reported that appellant had cervical and lumbar disc disease with radiculopathy. He also indicated that appellant had depression because of stress and work. Dr. Reinhardt diagnosed cervical spine disc disease, depression, lumbar disc disease with bilateral radiculopathy, and right shoulder rotator cuff.

OWCP also received additional medical reports dated May 20 and June 17, 2019 by Dr. Reinhardt regarding follow-up evaluation for appellant's cervical, thoracic, and lumbar spine, and shoulders, which were substantially similar to his April 15, 2019 report.

By decision dated July 10, 2019, OWCP denied modification of the April 3, 2019 decision.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁷

⁷ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.¹⁰

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.¹¹ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to include additional cervical, lumbar, shoulder, and psychological conditions causally related to his accepted August 28, 2012 employment injury.

Preliminary, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's February 1, 2016 merit decision. The Board previously considered this evidence in its April 3, 2017 merit decision.¹³ Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.¹⁴

In support of his claim, appellant submitted additional reports by Dr. Reinhardt dated June 1, 2016 to June 17, 2019. Dr. Reinhardt described the August 28, 2012 employment injury and indicated that appellant had cervical and lumbar disc disease with radiculopathy. He provided examination findings and diagnosed cervical spine disc disease, depression, lumbar disc disease with bilateral radiculopathy, and right shoulder rotator cuff tear. Dr. Reinhardt requested that appellant's claim be expanded to include spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, lumbar spondylosis with foramen stenosis, and right shoulder rotator cuff tear. Although Dr. Reinhardt opined that appellant's claim should include additional cervical

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Id.*

¹¹ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

¹² *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

¹³ *Supra* note 4.

¹⁴ See *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *K.K.*, Docket No. 17-1061 (issued July 25, 2018). The Board will, therefore, not review the evidence addressed in the prior appeal.

and lumbar conditions, he did not provide a rationalized medical explanation for his opinion.¹⁵ The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁶ Dr. Reinhardt's reports, therefore, are insufficient to establish appellant's claim.

In a July 26, 2016 report, Dr. Grimes described the August 28, 2012 employment injury and conducted a mental status examination. He diagnosed chronic pain disorder. Dr. Grimes opined that appellant suffered a work-related injury. He did not, however, explain how appellant developed chronic pain disorder as a result of his accepted injury. As noted above, a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁷ Dr. Grimes' opinion is therefore insufficient to establish appellant's claim.

Appellant was also treated by Dr. Duvall who provided cervical and lumbar spine examination findings in reports dated January 4 and February 29, 2016. Dr. Duvall diagnosed lumbar and neck sprain, and lumbar pain. These reports, however, do not provide an opinion on the cause of appellant's cervical and lumbar conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁸

OWCP also received diagnostic reports dated March 13, 2017 and March 11, 2019. However, diagnostic studies, standing alone, lack probative value as they do not address whether an employment incident caused the diagnosed condition.¹⁹

The Board finds that the medical evidence of record is insufficient to establish causal relationship between the additional cervical, lumbar, and shoulder conditions and the accepted August 28, 2012 employment injury and, thus, appellant has not met his burden of proof to establish his claim.

On appeal counsel argues that OWCP's decision is contrary to fact and law, but has not cited any basis for such assertion.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

¹⁵ See *R.N.*, Docket No. 19-0994 (issued November 7, 2019).

¹⁶ *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

¹⁷ *Id.*

¹⁸ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁹ *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional cervical, lumbar, and shoulder conditions causally related to his accepted August 28, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 2, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board